

Frank Sirianni

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1 UNITED STATES DISTRICT COURT  
2 EASTERN DISTRICT OF NEW YORK

3 Docket # 06-CV-6695 (JS) (WDW)  
4 06-CV-6695 (JS) (WDW)

5 KOGUT,

6 Plaintiff,

7 vs.

8 THE COUNTY OF NASSAU, et al.,

9 Defendants.  
10 \_\_\_\_\_/

11 Wednesday, December 14, 2011  
12 1601 Belvedere Road  
13 West Palm Beach, Florida  
14 10:14 a.m. to 12:42 p.m.

15 VOLUME 3  
16 CONTINUED VIDEOTAPED  
17 DEPOSITION OF FRANK SIRIANNI

18 Reported before Tracey S. LoCastro, Registered  
19 Professional Reporter, Notary Public in and for the  
20 State of Florida at Large, pursuant to Notice of Taking  
21 Deposition filed by the Defendants in the above cause.  
22  
23  
24  
25

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**EXHIBITS**

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<b>(All exhibits retained by counsel)</b>	

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1 P R O C E E D I N G S

2 - - -

3 VIDEOGRAPHER: We're now on the video  
4 record. This is the continuation of frank  
5 Sirianni's deposition. We are taking place on 10:11:54  
6 December 14th, 2011 and the time on the record  
7 is 10:14 a.m. thank you.

8 THEREUPON,

9 FRANK SIRIANNI,  
10 having been first duly sworn, was examined and  
11 testified as follows:

12 THE WITNESS: I do.

13 C R O S S E X A M I N A T I O N

14 BY MS. CORNWALL:

15 Q. Good morning, Mr. Sirianni. 10:12:14

16 A. Good morning.

17 Q. I'm Debbie Cornwall. I represent John  
18 Restivo and Dennis Halstead.

19 We've met before, right?

20 A. Yes, we have. 10:12:22

21 Q. I'm going to ask you some more questions  
22 this morning.

23 A. All right.

24 Q. Mr. Sirianni, did you have an opportunity to  
25 prepare for yesterday's testimony with your attorneys 10:12:30

1       beforehand?

2           A.     Yes.

3           Q.     Did you speak to them over the phone?

4           A.     No.

5           Q.     Did you meet with them in person? 10:12:38

6           A.     Yes.

7           Q.     How many times?

8           A.     Yesterday?

9           Q.     How many times in total did you meet with  
10       your lawyers, Mr. Freeman, Ms. Limani, Mr. Ferguson or 10:12:48  
11       anyone else to prepare for yesterday's testimony?

12          A.     About six weeks ago -- six weeks ago I met  
13       with Ms. Nadjia, yesterday with Lou and Monday with  
14       Nadjia and Lou.

15          Q.     When you met with Nadjia Limani six weeks 10:13:14  
16       ago, where was that meeting?

17          A.     At my home.

18          Q.     In Florida down here?

19          A.     Yes.

20          Q.     How long was the meeting? 10:13:24

21          A.     I would say about hour and a half, two  
22       hours.

23          Q.     When did she -- when was the appointment  
24       for?

25          A.     I don't remember the date. 10:13:34

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1 Q. What time of day did she come to your house?

2 A. It was in the late afternoon.

3 Q. And when did she leave?

4 A. Couple hours after that.

5 Q. Did you look at documents during that 10:13:48  
6 meeting?

7 A. No.

8 Q. You mentioned you also met with Mr. Freeman  
9 and Ms. Limani on Monday --

10 A. That's correct. 10:14:00

11 Q. -- the day before they questioned you.

12 A. Yes.

13 Q. Where was that meeting?

14 A. Right here.

15 Q. What time did you meet? 10:14:10

16 A. About 9:15, 9:30.

17 Q. When did you break?

18 A. When we came upstairs here, 10:00.

19 Q. So you're referring to yesterday, the day  
20 that you gave testimony. 10:14:22

21 A. And the day before.

22 Q. Okay. So I'm referring to Monday, the day  
23 before you testified.

24 A. Right.

25 Q. You mentioned you had a meeting with 10:14:28

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1 Mr. Freeman and Ms. Limani.

2 A. Yes.

3 Q. And that was a day when you did not testify?

4 A. That's correct.

5 Q. What time did you meet with them that 10:14:36  
6 morning?

7 A. Probably about 10:00.

8 Q. And how long did that meeting go?

9 A. I don't recall how long it went. I wasn't  
10 looking at a watch, so I don't know. 10:14:48

11 Q. Well, did it go through lunchtime?

12 A. It might have. I really can't be sure.

13 Q. It's hard to remember how long your meeting  
14 was two days ago?

15 A. Yes. 10:14:58

16 Q. Did you look at any documents on Monday?

17 A. Not that I can recall, no.

18 Q. You can't remember looking at any documents  
19 on Monday?

20 A. No, I didn't, can't recall. 10:15:08

21 Q. Did you have lunch with your lawyers on  
22 Monday?

23 A. No. Wait a minute now. Let me take that  
24 back. Let me think. Yes.

25 Q. And where did you eat? 10:15:22

1 A. Where did we eat? We ate downstairs in the  
2 hotel.

3 Q. In the hotel restaurant?

4 A. Yeah.

5 Q. Did you continue meeting together after you 10:15:40  
6 ate downstairs?

7 A. We met and then had lunch and then a short  
8 while later, a few minutes after then I left.

9 Q. And did you have any conversations with your  
10 attorneys after you left on Monday and before you 10:15:58  
11 testified Tuesday morning?

12 A. I left, I left.

13 Q. Did you speak with your lawyers over the  
14 phone after you left?

15 A. No, I did not. 10:16:10

16 Q. You also mentioned that you met with  
17 Mr. Freeman yesterday morning.

18 A. Yes.

19 Q. For how long before you started testifying?

20 A. Forty minutes. 10:16:18

21 Q. Did you look at any documents during that  
22 meeting?

23 A. None that I can recall, no.

24 Q. Other than the meeting six weeks ago with  
25 Ms. Limani at your home, Monday's meeting from about 10 10:16:32



1 a.m. till just after lunch and yesterday's 40 minutes  
2 or so, have you done anything else to prepare for your  
3 deposition?

4 A. I might have looked at a statement.

5 Q. Which statement might you have looked at? 10:16:50

6 A. Harry Smyle's statement.

7 Q. Was it a Harry Smyle statement that you  
8 took?

9 A. I believe so.

10 Q. Which one? 10:17:00

11 A. The first statement, I think.

12 Q. The March 7th signed statement?

13 A. I believe so.

14 Q. Was it the typed version or the handwritten?

15 A. My handwriting. 10:17:14

16 Q. Your handwritten statement that you wrote  
17 out for Harry Smyle to sign on March 7th of 1985?

18 A. Yes.

19 Q. Other than that statement, did you look at  
20 any other documents to prepare for your deposition? 10:17:28

21 A. No.

22 Q. You testified yesterday, I believe, that you  
23 were a detective for Nassau County for 21 years; is  
24 that right?

25 A. That's right. 10:17:46

1 Q. During that time you were assigned to the  
2 robbery squad.

3 A. Yes.

4 Q. And also to major cases.

5 A. Yes.

10:17:52

6 Q. And you had temporary assignments as well to  
7 the homicide squad.

8 A. Yes.

9 Q. Had you worked on homicide cases prior to  
10 your temporary assignment on the Fusco case?

10:18:00

11 A. Yes.

12 Q. Over how many years before December of 1984  
13 had you had those temporary assignments to homicide?

14 A. I'd say maybe 12.

15 Q. And that was on an as-needed basis?

10:18:20

16 A. Yes.

17 Q. Fair to say that you worked many, many  
18 homicide cases before the Fusco case?

19 A. Yes.

20 Q. Can you estimate for me how many you worked  
21 on before the Fusco case?

10:18:30

22 A. That would be just a guess.

23 Q. I don't want you to guess.

24 Was it more than 10?

25 A. Yes.

10:18:40

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1 Q. Was it more than 20?

2 A. It could have been.

3 Q. All right. In your experience in homicide,  
4 did you become aware that homicide investigations often  
5 involved the collection and testing of various kind of 10:18:58  
6 forensic evidence?

7 A. Yes.

8 Q. And was there a particular unit or units in  
9 the Nassau County Police Department that was  
10 responsible for that part of the work? 10:19:12

11 A. Yes.

12 Q. What department was that?

13 A. Crime scene.

14 Q. The crime scene unit. And what did the  
15 crime screen unit do? 10:19:20

16 A. They collected the evidence, they  
17 photographed the scene.

18 Q. Did they document the photographs as well on  
19 logs or lists?

20 A. Yes, they documented. 10:19:28

21 Q. Was there also a department responsible for  
22 collecting and testing trace evidence?

23 A. That was the Scientific Investigation  
24 Bureau.

25 Q. The SIB? 10:19:42

1 A. Yes.

2 Q. And trace evidence was what?

3 A. Hair, blood.

4 Q. So serology as well, bodily fluids?

5 A. Yes. 10:19:54

6 Q. The SIB would be responsible for collecting  
7 and testing that evidence?

8 A. Yes.

9 Q. And you were very familiar with the  
10 protocols of the SIB and the crime scene unit over the 10:20:00  
11 years that you worked on homicide cases, weren't you?

12 A. I knew it was their responsibility, yes.

13 Q. You spoke yesterday about the case files and  
14 the case jackets in homicide; do you recall that?

15 A. Yes. 10:20:18

16 Q. Is it fair to say that while homicide had  
17 its own case files or case jacket for any given  
18 homicide investigation, the SIB or units doing testing  
19 on evidence in a given homicide would also keep their  
20 own case files as well? 10:20:34

21 A. Yes, I would assume so.

22 Q. And that would include the crime scene unit  
23 would have its own case file going.

24 A. They probably would.

25 Q. And the SIB would have its own case file 10:20:46

1 going if they were doing any work.

2 A. Yes, they would.

3 Q. And one of the other things we've discussed  
4 previously is the responsibility to disclose helpful  
5 information -- withdrawn.

10:21:04

6 Do you recall when you testified about a  
7 year and a half ago we talked about criminal  
8 defendants' right of access to helpful evidence, Brady  
9 material.

10 A. I can't recall.

10:21:26

11 Q. You don't remember that?

12 A. No.

13 Q. Well, let me show you your testimony and see  
14 if that helps, how's that?

15 A. Fine. That would be great.

10:21:34

16 Q. Please take a look at your transcript of  
17 your deposition from June 15th, 2010. You testified on  
18 that date, right?

19 A. Yes.

20 Q. I'm calling your attention to page 30 of  
21 your transcript. And I'm going to start at line 18  
22 where the little arrow is.

10:21:48

23 Do you see that?

24 A. Yes.

25 Q. And I asked you, "Did you understand that in 10:21:56

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1 1984 and '85 criminal defendants had a right of access  
2 to any information known to police that would tend to  
3 show their innocence?"

4 And your answer was, "Yes."

5 Do you see that? 10:22:12

6 A. Yes, I do.

7 Q. And that's consistent with your  
8 understanding today, right?

9 A. Yes, it is.

10 Q. Then I asked you, "Question: Did you 10:22:18  
11 understand that you had a duty to provide any such  
12 information to the prosecution?"

13 And your answer was, "Yes."

14 Do you see that?

15 A. Yes, I do. 10:22:28

16 Q. And that's consistent with your  
17 understanding today, isn't it?

18 A. Yes.

19 Q. All right. Then I asked you, "Did you also  
20 understand in 1984 and 1985 that criminal defendants 10:22:34  
21 also had a right of access to information about  
22 prosecution witnesses that could undermine their  
23 credibility?"

24 And your answer was, "Yes."

25 Right? 10:22:46

1 A. Yes, it was.

2 Q. And that's consistent with your  
3 understanding today?

4 A. Yes.

5 Q. And then I asked you, "And did you also 10:22:52  
6 understand that you as a police officer had a duty to  
7 share any such information with the prosecutor?"

8 Mr. Ferguson objected.

9 And you answered, "Yes."

10 Right? 10:23:04

11 A. Yes, I did.

12 Q. And is that consistent with your  
13 understanding today?

14 A. Yes.

15 Q. So generally speaking, was it your 10:23:10  
16 understanding in 1984 and 1985 that criminal defendants  
17 had a right of access to information that might be  
18 helpful to them in presenting their defense?

19 A. Yes.

20 Q. And that there was a corresponding duty on 10:23:26  
21 the part of detectives to make sure prosecutors had  
22 that information so they could turn it over to the  
23 defendants?

24 A. Yes.

25 Q. And that kind of helpful information would 10:23:34

1 include prior inconsistent statements by a prosecution  
2 witness, right?

3 MR. FREEMAN: Objection.

4 BY MS. CORNWALL:

5 Q. You may answer. 10:23:48

6 A. You want to say that again.

7 Q. One kind of information that criminal  
8 defendants had a right of access to because it would be  
9 helpful to their defense is information that a  
10 prosecution witness had given a prior inconsistent 10:24:04  
11 statement, right?

12 MR. FREEMAN: I'm objecting. I believe this  
13 is beyond the scope of knowledge of this  
14 witness. There might be certain instances where  
15 a prior inconsistent statement is Brady and 10:24:16  
16 certain situations where it's not.

17 BY MS. CORNWALL:

18 Q. You may answer.

19 A. I really can't answer that. I don't know.

20 Q. Is one of the areas that you understood 10:24:30  
21 would be helpful to a criminal defendant and therefore  
22 needed to be turned over to the prosecutor leads  
23 pointing in the direction of another suspect?

24 MR. FREEMAN: Objection. Same objection.

25 BY MS. CORNWALL: 10:24:46



1 Q. You may answer.

2 A. Not necessarily so.

3 Q. Well, a criminal defendant -- withdrawn.

4 From time to time did you observe any of the  
5 trials that you worked on? 10:24:56

6 A. After I testified, yes.

7 Q. And you're aware, are you not, that one  
8 legal defense strategy by criminal defendants is to  
9 argue someone else did it, it wasn't me?

10 A. That's what they say, yes. 10:25:12

11 Q. And evidence known to the police that would  
12 support that defense theory is information that had to  
13 be turned over to the prosecutor, right?

14 MR. FREEMAN: Objection, same.

15 THE WITNESS: I don't know how to answer 10:25:28  
16 that.

17 BY MS. CORNWALL:

18 Q. Why not?

19 A. Because I don't. I just don't know how to  
20 answer it. I've been out of the game a long time. 10:25:34

21 Q. Are you saying that you don't remember?

22 A. I don't.

23 Q. Okay. Would you agree, sir, that  
24 information pointing to a different suspect can be used  
25 to show the defendant's innocence? 10:25:54

1 A. Yes.

2 Q. And as you testified earlier and we just  
3 looked at, defendants had a right of access to any  
4 information known to the police that would tend to show  
5 their innocence. 10:26:10

6 A. Yes.

7 Q. All right. You also have testified  
8 previously that Detective Volpe is the one who provided  
9 information to the prosecutors in the Fusco case,  
10 right? 10:26:28

11 A. Yes.

12 Q. You didn't do that directly.

13 A. No. He was the lead detective on that.

14 Q. And as the lead detective he collected your  
15 notes? 10:26:38

16 A. Everybody's notes.

17 Q. Everybody's notes.

18 And he took responsibility for disclosing  
19 information to the prosecutor.

20 A. Yes. 10:26:46

21 Q. And likewise, those separate case files that  
22 were created in the SIB or the crime scene unit, they  
23 would take responsibility for directly disclosing their  
24 information to the prosecutors, right?

25 A. Yes. 10:27:06

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1 Q. Now, you've testified, Mr. Sirianni, that  
2 there were biweekly meetings held on this case.

3 A. Yes.

4 Q. And those meetings were attended by the CO  
5 Shaun Spillane.

10:27:30

6 A. Yes.

7 Q. Your sergeant Soupy Campbell.

8 A. Yes.

9 Q. Lead detective Joe Volpe.

10 A. Yes.

10:27:38

11 Q. Yourself.

12 A. Yes.

13 Q. Detective Perrino.

14 A. Yes.

15 Q. Who else?

10:27:42

16 A. Anybody else that was assigned to that case.

17 Q. Would that include Detective Allen?

18 A. If he was there, yes.

19 Q. Would that include police officers

20 Connaughton and Diehl?

10:27:54

21 A. Yes.

22 Q. How about Detective Dempsey?

23 A. I'm sure. I'm sure he was.

24 Q. And --

25 MR. FREEMAN: Excuse me for a second. Could 10:28:08

1 I have a question read back. I think I missed a  
2 question.

3 MS. CORNWALL: Sure.

4 (A discussion was held off the record.)

5 (A portion of the record was read by the  
6 reporter.)

7 MR. FREEMAN: I object. Could we have a  
8 clarification. Did you mean Brady or just turn  
9 the information over to Volpe?

10 MS. CORNWALL: The question, I believe, was 10:29:14  
11 clear.

12 MR. FREEMAN: Could you read the one before  
13 that, please.

14 (A portion of the record was read by the  
15 reporter.)

16 MR. FREEMAN: I object and I think the  
17 question is vague and I'm not sure that my  
18 client's answer was responsive, so we'll just  
19 leave it at that for now.

20 MS. CORNWALL: Fine. 10:30:24

21 BY MS. CORNWALL:

22 Q. Mr. Sirianni, in addition to the biweekly  
23 meetings, you were familiar with the case file in the  
24 Fusco case.

25 A. I was familiar with the file. 10:30:40

1 Q. You were familiar with the leads that had  
2 come in?

3 A. We would read the leads that come in.

4 Q. And you were familiar with the leads that  
5 had been investigated. 10:30:52

6 A. Yes.

7 Q. Fair to say there was daily discussion  
8 between you and other members of the team about the  
9 status of the investigation?

10 A. We talked about different things, yes. 10:31:02

11 Q. So when Mr. Freeman asked you a line of  
12 questions yesterday about whether information Mr. Smyle  
13 was giving you had ever been known to the police  
14 department before, you were able to answer those  
15 questions because you knew what was in that homicide 10:31:18  
16 file.

17 A. No, I knew I took the statement from Harry  
18 Smyle.

19 Q. And in order to be able to know whether  
20 Harry Smyle is offering new information to the 10:31:32  
21 investigation, you have to be familiar with what's been  
22 done before.

23 A. What we discussed before.

24 Q. Right. So you were up to speed on what had  
25 been done in the investigation. 10:31:48

1 A. At that time.

2 Q. And during the course of your involvement in  
3 this investigation, right?

4 A. At that time.

5 Q. That time being? 10:32:00

6 A. During the course of the investigation.

7 Q. All right. Please take a look at what has  
8 previously been marked as Exhibit 163.

9 Do you recognize this document?

10 A. Yes, I do. 10:32:28

11 Q. What is it?

12 A. Statement of John T. French.

13 Q. And whose handwriting is it in?

14 A. Mine.

15 Q. When did you take this statement from John 10:32:32  
16 T. French?

17 A. December 7th, 1984.

18 Q. Given that you were familiar with the status  
19 of the investigation, you would, as of the time you  
20 took this statement on January 7th of 1984, have been 10:32:58  
21 familiar with who John French was, right?

22 A. At the time I took it.

23 Q. All right. And specifically, you would have  
24 been familiar with the information in Exhibit 161,  
25 notes of an interview with John French from the day 10:33:16

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1 before.

2 A. No, I never seen this statement.

3 Q. You've never seen it?

4 A. No.

5 Q. Well, let's go through it together. 10:33:24

6 Why don't you read it into the record if you  
7 would?

8 A. "December 6th, 1984, 1840 hours. Present at  
9 58," I don't know the name of the street, "Malvern, New  
10 York, home of John T. French. He stated that on 10:33:46

11 11-10-84 his 1971 Oldsmobile sedan registration

12 5233-BJN New York, his car was parked on the southwest  
13 corner of Lakeview Avenue and Ocean Avenue. It was  
14 stolen some time between 2130 to 2305 hours that date.

15 On 11-18-84 Mr. French went out looking around for his 10:34:18

16 car. He entered Lakeview and he found it parked on

17 Woodfield Road near the railroad tracks. He then got

18 his keys and drove the car to Lynbrook PD. Prior to

19 going to the PD his sister, Lori, found a pair of

20 ladies' blue jeans with stripes. Blue jeans were 10:34:46

21 inside out. Jeans were found on right rear floorboard

22 halfway under right passenger seat."

23 Q. Thank you.

24 So whether or not you had seen Plaintiff's

25 161 before or not, fair to say by the time you went out 10:35:04

1 to take this statement from John French on December 7th  
2 you were familiar with the information in it.

3 A. On this statement here?

4 Q. Yes.

5 A. I never seen this before. 10:35:22

6 Q. Right.

7 A. I just got this off a lead sheet. It was a  
8 lead sheet with his name on it. We went out to  
9 interview him.

10 Q. And who is "we"? 10:35:30

11 A. Had to be either Perrino or -- I don't  
12 really recall if it was Perrino or Connaughton or  
13 Diehl. I don't remember who.

14 Q. And you went out to see him because he  
15 called the police concerned that his car had been 10:35:48  
16 stolen the same night that Theresa Fusco had gone  
17 missing and it had just been reported that her dead  
18 body had been found and he was afraid there might be a  
19 connection between the two, right?

20 MR. FREEMAN: Objection. 10:36:08

21 BY MS. CORNWALL:

22 Q. That's why he called the police, right?

23 MR. FREEMAN: How can this witness say why  
24 the other person called the police?

25 THE WITNESS: I can't answer for him. 10:36:16



1 BY MS. CORNWALL:

2 Q. Sir, you interviewed Mr. French, right?

3 A. Yes. But I can't answer why he called the  
4 police.

5 Q. Why did you go out to interview Mr. French? 10:36:24

6 A. His name was on a lead sheet.

7 Q. And what did the lead sheet say about him?

8 A. That the car was -- his car was stolen and  
9 it was found at the railroad station and he drove it  
10 back to his home. 10:36:40

11 Q. And what did that have to do, if anything,  
12 with the Fusco case?

13 A. The gas station where this car was stolen  
14 from was in close proximity to where her body was  
15 found. 10:36:54

16 Q. So you went out to take a statement from  
17 Mr. French on December 7th of 1984?

18 A. Yes.

19 Q. Why don't you read the statement that you  
20 took from him into the record, please, it's Exhibit 10:37:04  
21 163.

22 A. "Statement from John T. French taken  
23 12-7-84. My name is John T. French. I am 21 years  
24 old, born on 7-31-63. I live at 58 Broadway Malvern,  
25 New York, with my mother and two sisters. My home 10:37:26

1 phone number is 599-3227. Today Detective Sirianni of  
2 the homicide squad was present at my home where he  
3 showed me a length of rope and a brown felt pouch. I  
4 have positively identified the rope and the pouch as  
5 mine. I had the length of rope in the back seat of my 10:37:50  
6 car because I used it to tie down a bed that I had  
7 transported for my friend. The felt pouch I used to  
8 keep change in. I'm telling my story to Detective  
9 Sirianni of the homicide squad. I've read it, signed  
10 it and it is the truth." 10:38:12

11 Q. All right. So you had some items that you  
12 showed Mr. French on December 7th.

13 A. Yes.

14 Q. Where did you get those items to show him?

15 A. They were taken from the car. 10:38:22

16 Q. The car that was recovered?

17 A. Yes.

18 Q. Well, if you would please take a look at  
19 169, previously marked. It's a collection of  
20 photographs. That's the car you're referring to, 10:38:34  
21 right?

22 A. I believe it is.

23 Q. All right. And if you page forward to the  
24 second to last page, there's a photograph of a length  
25 of rope on the ground. 10:39:02

1 A. Yes.

2 Q. Is that the length of rope that you showed  
3 Mr. French and that he identified?

4 A. It could be.

5 Q. Did you go out to the scene where these 10:39:16  
6 photographs were taken?

7 A. Yes.

8 Q. You did.

9 And what was the importance of these -- what  
10 appears to be a parking area by the side of a road near 10:39:26  
11 railroad tracks?

12 A. At the time I knew why I went out there, but  
13 right now I can't recall why.

14 Q. Is this the area where Mr. French reported  
15 finding his car? 10:39:42

16 A. Yes.

17 Q. And that was about a week after it had gone  
18 missing.

19 A. Yes.

20 Q. And so there was a length of rope out there 10:39:54  
21 on the ground as reflected in the second to last  
22 photograph of Exhibit 169.

23 A. Yes.

24 Q. And you showed that to Mr. French and he  
25 said, yes, that's the rope that had been in my car. 10:40:12

1 A. Yes, he did.

2 Q. All right. Now, what else did you talk to  
3 Mr. French about that day?

4 A. I don't recall.

5 Q. You became aware, did you not, that a pair 10:40:38  
6 of ladies' blue jeans with stripes were found  
7 inside-out in his car.

8 A. Yes.

9 Q. And the fact that the car had gone missing  
10 from an area near where the body was later found, the 10:41:00  
11 fact that the timing of when the car went missing was  
12 around the same time the victim went missing and the  
13 fact that ladies' striped blue jeans were found  
14 inside-out in the car all raised a question about  
15 whether there was a link between the disappearance of 10:41:20  
16 the car and the abduction of Theresa Fusco, right?

17 A. I would say so.

18 Q. And that was a lead that was explored by the  
19 Nassau County Police Department when Mr. French called  
20 in, right? 10:41:36

21 A. Yes.

22 Q. And you were part of that investigation.

23 A. As far as taking a statement from him, yes.

24 Q. Yes. Fair to say -- withdrawn.

25 The body was found on December 5th of 1984? 10:41:48

1 A. Yes.

2 Q. And he spoke to you two days later?

3 A. Yes.

4 Q. Are you aware --

5 MR. FREEMAN: "He" meaning French? 10:41:58

6 MS. CORNWALL: Yes.

7 BY MS. CORNWALL:

8 Q. And are you aware that the Nassau County  
9 Police Department took in the vehicle for processing?

10 A. Yes. 10:42:12

11 Q. In fact, Exhibit 169 shows the vehicle in  
12 one of the Nassau County Police Department impound  
13 garages, does it not?

14 A. It's an emergency building.

15 Q. The emergency services building? 10:42:30

16 A. Yes.

17 Q. And the reason why the Nassau County Police  
18 Department brought in the car for processing was to see  
19 if they could identify forensic evidence in the vehicle  
20 linking it to Theresa Fusco. 10:42:46

21 MR. FREEMAN: Objection.

22 BY MS. CORNWALL:

23 Q. Right?

24 MR. FREEMAN: You're calling for his  
25 understanding of what other people did. 10:42:52

1 MS. CORNWALL: Yes, I am.

2 THE WITNESS: The crime scene fellows would  
3 take over that, they would check the car.

4 BY MS. CORNWALL:

5 Q. And wouldn't it be important for a thorough 10:43:06  
6 investigation to conduct forensic testing of a vehicle  
7 to see if there could -- if there was forensic evidence  
8 corroborating the theory that Theresa Fusco had been in  
9 the vehicle?

10 A. I would think so, yes. 10:43:26

11 Q. And, in fact, you spoke to Mr. French -- I'm  
12 showing you Exhibit 164 -- about the people who had  
13 been in his car, right?

14 A. Yes.

15 Q. This is another document in your 10:43:44  
16 handwriting.

17 A. Yes, it is.

18 Q. Reflecting notes of a conversation you had  
19 with John French.

20 A. Yes. 10:43:52

21 Q. By the way, there's no date on this  
22 document, is there?

23 A. None that I see, no.

24 Q. On the third page of the document what does  
25 it say? 10:44:06

1 A. Hair sample submitted 12-27-84.

2 Q. Fair to say that you were asking John French  
3 to identify people who had been in his car?

4 A. Yes.

5 Q. And you wrote down the answers? 10:44:22

6 A. Yes, I did.

7 Q. And you wrote down what color hair each of  
8 them had, didn't you?

9 A. Yes.

10 Q. Why did you do that? 10:44:38

11 A. I wanted to know what color hair they had,  
12 that's all.

13 Q. Well, you didn't ask for a description of  
14 those people, did you?

15 A. No, I did not. 10:44:46

16 Q. You just asked for their hair color.

17 A. Yes.

18 Q. Because you knew that the Scientific  
19 Investigation Bureau was going to be combing that car  
20 for hair samples. 10:44:56

21 A. Combing it for any type of forensic  
22 evidence.

23 Q. Including hair, right?

24 A. Hair, blood, semen, anything.

25 Q. Anything. And it was important to know who 10:45:04

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1 had been in the vehicle before so that you could either  
2 rule out their hair if hair is found in the car or  
3 identify a suspect or the victim, right?

4 A. Yes.

5 Q. That's why you were asking who had been in 10:45:26  
6 the car and what color hair they had.

7 A. Yes.

8 Q. Fair to say -- withdrawn.

9 You were aware, of course, that when Theresa  
10 Fusco went missing she'd been last scene wearing 10:45:44  
11 striped blue jeans.

12 A. Yes, it was on the missing poster.

13 Q. Is Exhibit 168, which I'm showing you, the  
14 missing poster that you're referring to?

15 A. Uh-huh. 10:45:58

16 Q. And it indicates that she'd been wearing  
17 striped blue jeans.

18 A. Yes, it does.

19 Q. So the fact that John French's car went  
20 missing on the evening of November 10th of 1984 around 10:46:06  
21 the same time that Theresa Fusco went missing and was  
22 later found with a pair of ladies' striped blue jeans  
23 inside-out in the car consistent with what the missing  
24 poster reported that she'd been last wearing, that was  
25 a big lead at the time for the police department, 10:46:26



1 right?

2 A. It was something to look at, yes.

3 Q. It was an important lead to be explored.

4 A. I would say it would be a lead.

5 Q. It was the first big lead you had in the 10:46:38  
6 case, wasn't it?

7 A. I can't remember exactly if that was the  
8 first big lead or not.

9 Q. Can you think of any other strong lead you  
10 had in the case before the focus turned to John Kogut, 10:46:54  
11 John Restivo and Dennis Halstead other than the  
12 discovery of John French's car with the inside-out blue  
13 striped jeans in it?

14 A. Not that I can remember.

15 Q. And this evidence, too, is a lead -- 10:47:26  
16 withdrawn.

17 There was never any connection between John  
18 French's car and John Kogut, John Restivo or Dennis  
19 Halstead, right?

20 A. Not to my knowledge. 10:47:46

21 Q. So this is a lead that points in a different  
22 direction from those three men.

23 A. Yes.

24 Q. So that's information that should have been  
25 turned over to the prosecutor as something that would 10:47:56

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1 be helpful to their defense, right?

2 MR. FREEMAN: Objection.

3 THE WITNESS: I have no idea.

4 BY MS. CORNWALL:

5 Q. You have no idea? 10:48:12

6 A. No.

7 Q. Well, we discussed a moment ago, sir, that  
8 information pointing in the direction of a different  
9 suspect is one kind of information that helps  
10 defendants prove their innocence, right? 10:48:26

11 A. That's correct.

12 Q. And information that helps them to prove  
13 their innocence is information that has to be turned  
14 over to the prosecutor because criminal defendants have  
15 a Constitutional right of access to it. 10:48:36

16 A. That's right.

17 Q. Okay. So the information about the  
18 disappearance of the French car, the discovery of the  
19 French car, the finding of the blue striped jeans  
20 inside-out consistent with the jeans the victim had 10:48:48  
21 last been seen wearing, that's information consistent  
22 with the innocence of John Restivo, Dennis Halstead and  
23 John Kogut, right?

24 A. Yep.

25 MR. FREEMAN: Objection. 10:49:02

1 BY MS. CORNWALL:

2 Q. And it should have been turned over.

3 A. I'm assuming it was.

4 Q. I'm not asking whether -- you didn't turn it  
5 over, did you? 10:49:06

6 A. No.

7 Q. That would have been Joe Volpe's job?

8 A. He would have discussed it with Fred Kline.

9 Q. It would have been his duty to discuss it  
10 with Fred Kline, right? 10:49:16

11 A. He would have made Fred Kline aware of it.

12 Q. Well, were you present at any conversations  
13 between Mr. Volpe and Mr. Kline?

14 A. No.

15 Q. You were relying on Mr. Volpe to do his duty 10:49:26  
16 to disclose information that criminal defendants had a  
17 right to, as the carrying detective.

18 A. Yes.

19 Q. In your conversations with Mr. French in  
20 December of 1984 did you learn where he had been when 10:49:50  
21 the car went missing?

22 A. I don't recall what he said.

23 Q. To your knowledge were the other friends who  
24 were gathered together with him when his car went  
25 missing, were those people interviewed by the police? 10:50:08

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1 A. Probably were.

2 Q. So is it fair to say from your answer that  
3 you're not sure?

4 A. I'm not.

5 Q. They should have been. 10:50:22

6 A. Yes.

7 Q. That would have been the thorough way to go  
8 about things.

9 A. I would think so.

10 Q. To your knowledge, was the gas station 10:50:28  
11 attendant at the lot where the car had gone missing  
12 interviewed?

13 A. I don't recall.

14 Q. He should have been, right?

15 A. I would assume so. 10:50:40

16 Q. For a thorough investigation of the French  
17 car lead.

18 A. Uh-huh. Yes.

19 Q. Shaun Spillane was your commanding officer,  
20 right? 10:51:10

21 A. Yes, he was.

22 Q. I'm going to show you two documents, one is  
23 a very old what looks like a mimeographed copy, Exhibit  
24 184 that's hard to make out so we've gone ahead and  
25 typed up another copy which is a lot easier to read. 10:51:30

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1 It's Exhibit 185.

2 And I'd like to ask you a couple of  
3 questions to see if you agree with some of the things  
4 that your commanding officer said about the case, all  
5 right?

10:51:50

6 A. Yes.

7 Q. And you can refer to whichever version you  
8 prefer.

9 MR. FREEMAN: I don't have time to read  
10 this, but I'm assuming it's an accurate copy. 10:51:56  
11 And I reserve the right if I find something  
12 different to bring that up later.

13 MS. CORNWALL: Sure.

14 BY MS. CORNWALL:

15 Q. Let's look at paragraph 2. On the fourth 10:52:10  
16 line down of the Exhibit 185, the retyped version,  
17 Shaun Spillane wrote, "During the course of the initial  
18 investigation at the command post approximately 500  
19 persons were interviewed. As the investigation  
20 progressed, few new developments surfaced. After 10:52:32  
21 approximately two months the precinct squad detectives  
22 returned to their commands. As a result of the  
23 manpower loss from the investigation of this case,  
24 Detective Volpe requested to have two bureau of special  
25 operations men assigned so that they could pick up 10:52:48

1 individuals or stake out residences so that they could  
2 be interviewed or interrogated by detectives.

3 Subsequently, Police Officer Michael Connaughton and  
4 Police Officer William Diehl were assigned to the  
5 homicide squad effective January 5th of 1985."

10:53:06

6 Do you see that there?

7 A. Yes, I do.

8 Q. Do you agree with CO Spillane that there was  
9 a loss of manpower in this homicide investigation after  
10 the first month or two?

10:53:18

11 A. Yes.

12 Q. And Volpe was left without other homicide  
13 detectives to work with, so he had to recruit officers  
14 Connaughton and Diehl.

15 A. Yes.

10:53:34

16 Q. And, in fact, there was a period of time in  
17 early 1985 when you had less to do with the  
18 investigation as well, right?

19 A. I believe so, yes.

20 Q. And you picked up again more regularly once  
21 you were asked to find Mr. Smyle and you did, in fact,  
22 find him.

10:53:44

23 A. Yes.

24 Q. Turning to paragraph 7 of CO Spillane's  
25 letter, if you would.

10:54:02

1 Do you have it?

2 A. Yes, I do.

3 Q. On the last page of the exhibit the first  
4 full sentence at the top of that page says, "This was  
5 no" -- it's going to be up here. Excuse me. Starting 10:54:26  
6 here he writes, "This was no ordinary homicide. The  
7 discovery of the body of a second missing person from  
8 Lynbrook aroused the entire South Shore community of  
9 Nassau County. This one had to be solved."

10 Do you see that? 10:54:50

11 A. Yes.

12 Q. And do you agree with CO Spillane that this  
13 was no ordinary homicide, it had to be solved?

14 MR. FREEMAN: Objection.

15 BY MS. CORNWALL: 10:55:04

16 Q. Given the context in which the body was  
17 found and the fact that other girls had gone missing in  
18 the same county.

19 A. Every case has to, especially a homicide  
20 case, we like to solve every homicide case. 10:55:22

21 Q. Of course. Would you agree that there was a  
22 particular pressure to solve this homicide case given  
23 that other girls had gone missing?

24 A. Yes. Are you referring to Kelly Morrissey?

25 Q. Well, there were a number of other girls, 10:55:38

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1 right?

2 A. Yeah.

3 Q. Jacqueline Martarella?

4 A. Yeah.

5 Q. Went missing on March 26th of 1985, March 10:55:44  
6 27th of 1985, right?

7 A. I believe so.

8 Q. Kelly Morrissey went missing --

9 A. Still missing.

10 Q. -- in June of 1984, right? 10:55:56

11 A. Yes.

12 Q. And in that context in particular there was  
13 incredible pressure from the community and from the  
14 press and from within the department to find the  
15 killer. 10:56:06

16 MR. FREEMAN: Objection.

17 THE WITNESS: We didn't get any pressure  
18 that I know of. We just did our job.

19 BY MS. CORNWALL:

20 Q. Would you agree with your CO that this was 10:56:14  
21 no ordinary homicide, the discovery of the body of a  
22 second missing person from Lynbrook aroused the entire  
23 South Shore community of Nassau County?

24 A. The community was aroused by it, yes.

25 Q. There was intense public concern about this 10:56:36



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1 case.

2 MR. FREEMAN: Objection.

3 THE WITNESS: I don't know what you mean by  
4 intense. I didn't feel any pressure.

5 BY MS. CORNWALL:

10:56:48

6 Q. You personally didn't feel pressure?

7 A. No.

8 Q. You weren't the carrying detective, were  
9 you?

10 A. No.

10:56:52

11 Q. You were given assignments and you carried  
12 them out.

13 A. Yes.

14 Q. It's a very different thing to carry an  
15 entire homicide on your shoulders.

10:57:00

16 A. Yes, it is.

17 Q. Referring to CO Spillane's letter, let's  
18 look at paragraph 4, which I placed in front of you.  
19 And there's a highlighted sentence there.

20 A. Yes.

10:57:52

21 Q. CO Spillane writes, "Once Kogut was  
22 arrested" -- and by the way, that's March 27th of 1985,  
23 right?

24 A. I guess it is, yes.

25 Q. "Once Kogut was arrested, the only thing we 10:58:06

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1 were left with was a statement of a co-defendant which  
2 would not be admissible against the other two  
3 defendants. Unable to speak with them because of the  
4 Miranda warnings by the attorney, we were left with a  
5 very weak if non-existent case against the other two 10:58:24  
6 individuals."

7 Do you see that?

8 A. Yes, I do.

9 Q. And the other two individuals refers to John  
10 Restivo and Dennis Halstead, right? 10:58:34

11 A. Yes.

12 Q. Do you agree with CO Spillane that as of the  
13 date of Kogut's arrest, March 26th or 27th of 1985,  
14 there was a very weak if non-existent case against John  
15 Restivo and Dennis Halstead? 10:58:52

16 MR. FREEMAN: Objection.

17 THE WITNESS: I can't answer for Shaun and  
18 what he thought was weak.

19 BY MS. CORNWALL:

20 Q. Let me show you his deposition from April 10:59:06  
21 21st of 2010. I'm going to point out to page 253  
22 starting at line 22.

23 You see that?

24 I asked him, "Question: Is it fair to say  
25 as of the date of Kogut's arrest, which was March 26th, 10:59:26

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1 1985, there was a very weak if non-existent case  
2 against Mr. Restivo and Mr. Halstead?"

3 And he answered, "Yes."

4 Do you see that?

5 A. Yes, I do. 10:59:38

6 Q. All right. Now, as the CO of homicide, he  
7 was intimately familiar with the case, right?

8 A. Yes, he was.

9 Q. So he was in a position to know how strong  
10 the case was against John Restivo and Dennis Halstead 10:59:50  
11 as of the date that John Kogut was arrested.

12 A. Yes.

13 Q. So do you agree with him that as of March  
14 26th of 1985 there was a very weak if non-existent  
15 against Mr. Restivo and Mr. Halstead? 11:00:06

16 MR. FREEMAN: Objection.

17 THE WITNESS: I really can't answer that,  
18 because I don't know.

19 BY MS. CORNWALL:

20 Q. Sir, was there any reliable evidence against 11:00:18  
21 Mr. Restivo and Mr. Halstead that could be used against  
22 them as of March 26th of 1985?

23 A. You're talking physical evidence?

24 Q. Any reliable evidence at all.

25 A. Well, would be the statement that Harry 11:00:38

1 Smyle gave.

2 Q. Which one?

3 A. The first one where he said he was with John  
4 Restivo and they were driving and he mentioned that  
5 they'd find her strangled somewhere before the body was 11:00:54  
6 even found.

7 Q. And Harry Smyle gave you that statement  
8 when?

9 A. The 7th, I think.

10 Q. Of March of 1985. 11:01:08

11 A. I believe so.

12 Q. Four months after it was publicly reported  
13 that Theresa Fusco's body had been found and that she  
14 had been strangled, right?

15 A. Yeah, well, he said that, he stated that 11:01:24  
16 prior to Thanksgiving and before Christmas.

17 Q. But you didn't hear him make that claim  
18 until four months after the body had been found  
19 strangled, right?

20 A. Yes. 11:01:38

21 Q. Would you have expected someone who had  
22 heard such a thing to have called the police when he  
23 heard it?

24 A. I would suspect somebody would call the  
25 police. 11:01:54

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1 Q. But he didn't call the police to report  
2 that, did he?

3 A. No, he didn't.

4 Q. So as of March 26th of 1985, the police  
5 department needed to corroborate John Kogut's 11:02:16  
6 confession for one, right?

7 A. Yes.

8 Q. And it needed to build a case against John  
9 Restivo and Dennis Halstead because John Kogut's  
10 confession could not be introduced against them. 11:02:26

11 MR. FREEMAN: Objection.

12 THE WITNESS: The way I look at it, we first  
13 got Harry Smyle; Harry led us to John Restivo;  
14 Restivo then led us to Kogut and Halstead.

15 BY MS. CORNWALL: 11:02:58

16 Q. As of March 26th of 1985, when Kogut was  
17 arrested, wasn't the case against Mr. Restivo and  
18 Mr. Halstead very weak if non-existent?

19 MR. FREEMAN: Objection.

20 THE WITNESS: I can't answer that and say it 11:03:24  
21 was weak.

22 BY MS. CORNWALL:

23 Q. You needed more, right?

24 A. You try to get more.

25 Q. Well, you needed more. You didn't have 11:03:32

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1 probable cause to arrest John Restivo or Dennis  
2 Halstead as of March 26th of 1985.

3 MR. FREEMAN: Objection.

4 BY MS. CORNWALL:

5 Q. Right? 11:03:44

6 A. I'm not going to answer that.

7 Q. Why not, sir?

8 A. I don't remember.

9 Q. You don't remember?

10 A. No. 11:03:50

11 Q. You don't remember.

12 Other than the Harry Smyle statement can you  
13 think of any other evidence incriminating John Restivo  
14 and Dennis Halstead as of March 26th of 1985?

15 A. Not that I can recall. 11:04:02

16 Q. Did Joe Volpe assign you the job of trying  
17 to corroborate the fact that the blue van was operative  
18 on November 10th, 1984?

19 A. He might have. I don't recall. He might  
20 have, yes. 11:04:32

21 Q. And Harry Smyle was familiar with the blue  
22 van, right?

23 A. So he said, yes.

24 Q. And he told you that he had seen it up on  
25 blocks before Thanksgiving, right? 11:04:38

1 A. I don't recall.

2 Q. You would need to rely on your  
3 contemporaneous notes to be able to remember that?

4 A. Yes.

5 Q. But you don't have any reflecting that, do 11:04:50  
6 you?

7 A. Not that I know of, no.

8 Q. You didn't take a statement from him to that  
9 effect either?

10 A. Not that I recall, no. 11:05:00

11 Q. You never made sure the prosecutor was aware  
12 Harry Smyle had seen that van on blocks during the two  
13 weeks prior to November 14th.

14 MR. FREEMAN: Objection.

15 THE WITNESS: Not that I can recall. 11:05:16

16 BY MS. CORNWALL:

17 Q. Harry Smyle told you specifically that the  
18 van was on blocks because the Restivo family did not  
19 want Charlie Restivo, John's brother, driving it drunk  
20 because they knew he was going to be drunk because he 11:05:30  
21 was about to go to jail on November 14th of 1984,  
22 right?

23 A. I don't know about that. I really don't.

24 Q. You don't remember that?

25 A. I don't. 11:05:40

1 Q. You would need again to rely on your notes?

2 A. Yes.

3 Q. Which, if you took any, you would have  
4 handed over to Mr. Volpe.

5 A. Yes. They would have been in the file. 11:05:48

6 Q. Sir, you testified yesterday that Harry  
7 Smyle never told you he had a nervous breakdown; do you  
8 remember that testimony?

9 A. Yes.

10 Q. And is that your recollection today? 11:06:08

11 A. Thinking back, he did say -- mention that he  
12 did have a nervous breakdown.

13 Q. He did, didn't he?

14 A. Yes.

15 Q. So when you testified under questioning from 11:06:20  
16 your attorney yesterday that Harry Smyle never told you  
17 he had a nervous breakdown, that was wrong.

18 A. Yes, it was. But I recalled it later on.

19 Q. When did you recall that Harry Smyle did, in  
20 fact, tell you he had had a nervous breakdown? 11:06:38

21 A. When I was driving home.

22 Q. What else in your testimony yesterday was  
23 wrong?

24 A. Nothing that I can remember.

25 Q. Did you review the transcript of your June 11:06:54



1 15th, 2010 deposition at any time before testifying  
2 here?

3 A. No.

4 Q. Yesterday you testified that Harry Smyle  
5 called the police to offer information on March 7th; is 11:07:20  
6 that accurate?

7 A. It could be, yes.

8 Q. And you also testified that Harry Smyle  
9 called the police to offer information on March 27th.

10 A. Harry used to call quite often. 11:07:40

11 Q. Uh-huh. And is it your testimony that each  
12 time the police department had contact with Harry Smyle  
13 after that first time on March 5th when you went out  
14 and you picked him up as he got into his car, each time  
15 thereafter Harry Smyle contacted the police department? 11:08:00

16 A. Yes, he would call.

17 Q. It wasn't because the police department was  
18 going after him; that's your testimony.

19 A. That's true.

20 Q. So he was just continually volunteering 11:08:12  
21 information.

22 A. Yes.

23 Q. Every time after March 5th.

24 A. Yes, he was.

25 Q. I believe you testified yesterday that the 11:08:24

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1 first morning, March 5th -- withdrawn.

2 I believe you testified yesterday that the  
3 first time you started surveilling Harry Smyle was  
4 about an hour or so before you spoke to him on March  
5 5th; is that accurate? 11:08:44

6 A. Yeah, could be.

7 Q. Well, let's do it this way. When did you  
8 begin surveillance on Harry Smyle?

9 A. I don't really recall, I don't.

10 Q. Was it the same day that you first spoke to 11:09:02  
11 him?

12 A. I can't recall.

13 Q. You testified previously that you'd been  
14 surveilling him for a couple of days.

15 A. Yes. 11:09:18

16 Q. Does that sound accurate to you?

17 A. That sounds right.

18 Q. And I believe you testified yesterday that  
19 on March 5th you were accompanied by Detective Volpe in  
20 the unmarked car? 11:09:30

21 A. I had to think about that, too. Either  
22 Volpe or Perrino.

23 Q. So as you sit here today, you're not sure  
24 who you were with?

25 A. Right. 11:09:38

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1 Q. I believe yesterday you testified that you  
2 were with Detective Volpe when questioning Mr. Smyle on  
3 the 5th; that was your testimony yesterday, right?

4 A. I believe that's right, yeah.

5 Q. And as you sit here today, are you still 11:09:52  
6 confident that you questioned Mr. Smyle on March 5th  
7 along with Volpe?

8 A. No, I think it was Danny was with me,  
9 Perrino.

10 Q. So that's something else you were wrong 11:10:02  
11 about yesterday.

12 A. I wasn't wrong, I just can't remember going  
13 back 27 years.

14 Q. Absolutely. It's been a very long time.

15 A. Yes, it has. 11:10:10

16 Q. And you know how to say "I don't remember"  
17 if, in fact, you don't remember, right?

18 A. I don't remember.

19 Q. But you testified that you were with Volpe.

20 A. Because he was the homicide lead detective. 11:10:18

21 MR. FREEMAN: I think the record will speak  
22 for itself how he answered the question  
23 yesterday.

24 BY MS. CORNWALL:

25 Q. Sir, what's a 262? 11:10:28

1           A.     It's a -- it's the case when you type  
2 everything up.

3           Q.     It's a police report, right?

4           A.     Right.

5           Q.     You didn't fill out any police reports in       11:10:42  
6 this case, no 262s.

7           A.     No.

8           Q.     Why not?

9           A.     I'm not the lead detective.

10          Q.     So is it your understanding of the practice    11:10:52  
11 and the policy in the Nassau County Homicide Unit back  
12 in the mid '80s that it is only the lead detectives's  
13 job to write formal police reports?

14          A.     Ah, for the whole case it's his  
15 responsibility, yeah, to put it down in a 262.               11:11:10

16          Q.     And under what circumstances, as far as you  
17 understand it, should a 262 be filled out?

18          A.     When the case is coming to a conclusion.

19          Q.     And what does that mean? When you've made  
20 an arrest?   11:11:30

21          A.     When you make an arrest.

22          Q.     And what should be in the 262?

23          A.     From the day we found the body, time of the  
24 notification and the day we found the body, everything,  
25 crime scene.   11:11:44

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1 Q. As sort of a closeout report, if you will?

2 A. It's like, yeah, full report.

3 Q. And on the lead sheets, some of which we  
4 looked at yesterday, there's not a reference to when  
5 the sheet is actually filled out, is there? 11:12:02

6 A. Not that I can recall.

7 Q. So looking back 20, 25 years later, we don't  
8 know when any given lead sheet was actually filled out.

9 A. No. We don't.

10 Can we take a break? 11:12:46

11 MS. CORNWALL: Sure.

12 VIDEOGRAPHER: Standby to go off media unit  
13 one. Going off the record at 11:15 a.m.

14 (A recess was taken.)

15 VIDEOGRAPHER: We're now back on media unit 11:24:12

16 number one. The time back on the record is  
17 11:26 a.m.

18 BY MS. CORNWALL:

19 Q. Mr. Sirianni, before we broke you testified  
20 that the one piece of information that you had that 11:24:32  
21 might incriminate John Restivo as of March 26th of '85,  
22 separate from the Kogut confession, was the statement  
23 you had taken from Harry Smyle on March 7th, right?

24 A. Yes.

25 Q. And the reason why you thought that tended 11:24:54

1 to incriminate John Restivo was that it was a statement  
2 alleging that before Thanksgiving of 1984 Mr. Restivo  
3 had said to Mr. Smyle, they'll probably find Theresa  
4 Fusco strangled somewhere, right?

5 A. Yes.

11:25:16

6 Q. And the reason why you thought that was an  
7 incriminating statement was that the statement was  
8 alleged to have been made before the body was  
9 discovered and found to have been strangled.

10 A. Yes.

11:25:34

11 Q. Now, when we spoke a year ago, we discussed  
12 the fact that there were a number of other people out  
13 there who had reported hearing that Theresa Fusco was  
14 strangled even before her body was found. Do you  
15 remember we discussed that?

11:25:54

16 A. I think we did.

17 Q. Let me show you the exhibit 194 that we were  
18 referring to.

19 Feel free to take a look through it and  
20 refresh your memory. As we talked about previously,  
21 each of these documents represents a report to the  
22 police that there were rumors by various people that  
23 Theresa Fusco had been strangled.

11:26:22

24 A. Yes, on the lead sheets. Yes.

25 Q. And that there were a number of different

11:26:48

1 people who were circulating that rumor, or who had  
2 heard that rumor before December 5th of 1984 when the  
3 body was found, right?

4 A. I believe so.

5 Q. So after Theresa Fusco was found, did anyone 11:27:04  
6 go back to talk to Tim Kehoo, for example?

7 A. Tim Kehoo?

8 Q. Withdrawn.

9 After the body was found, anyone go back to  
10 any of the people who had earlier reported hearing 11:27:24  
11 rumors that the body had been strangled?

12 A. I don't remember, I really don't.

13 Q. So you didn't consider them suspects based  
14 on the fact that they said, oh, yes, she'd been  
15 strangled before it was publicly known? 11:27:40

16 A. True.

17 Q. Because it was a rumor.

18 A. Yes.

19 Q. Just like if John Restivo had said to Harry  
20 Smyle before Thanksgiving of 1984, they'll probably 11:27:48  
21 find her strangled, that's repeating a rumor.

22 MR. FREEMAN: Objection.

23 THE WITNESS: I can't say it's a rumor,  
24 repeating a rumor. I don't know if John heard  
25 the rumor in the beginning. 11:28:06

1 BY MS. CORNWALL:

2 Q. It's something you'd want to ask.

3 A. Yes.

4 Q. Something you'd want to investigate further.

5 A. Yes. 11:28:12

6 Q. On its face it's no more incriminating than  
7 when Tim Kehoo says it or Ann Marie Gerace says it or  
8 Maryann Liguori says it before the body is found,  
9 right?

10 A. Yes. 11:28:32

11 Q. Mr. Sirianni, did you ever install a wire  
12 tap or eavesdropping device in Harry Smyle's apartment?

13 A. No.

14 Q. Are you aware of whether any such device was  
15 ever placed in his apartment, his home? 11:28:48

16 A. No.

17 Q. You don't know?

18 A. I don't believe there was one.

19 Q. Who would have been responsible for doing  
20 that if it had been done? 11:29:02

21 A. Joe Volpe and Fred Kline.

22 Q. Presumably there would be some documentation  
23 of it if it had happened.

24 A. Be a warrant.

25 MS. CORNWALL: I will reserve the balance of 11:29:22



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1 time, questions for now and defer to

2 Mr. Casteleiro. Thank you.

3 THE WITNESS: You're welcome.

4 CROSS EXAMINATION

5 BY MR. CASTELEIRO:

6 Q. Good morning, Mr. Sirianni. I'm Paul  
7 Casteleiro. I don't know if you recall meeting me back  
8 in 2010.

9 A. Without the beard.

10 Q. Exactly, without the beard. Without all the 11:29:42  
11 gray.

12 I'm going to ask you a couple of questions.  
13 I represent Mr. Kogut along with Anthony Grandinette.

14 I want to ask you some questions about the  
15 command center. You referred to the command center in 11:29:54  
16 your testimony yesterday to some questions from  
17 Mr. Freeman at one point. The command center was  
18 located on Park Place; is that correct?

19 A. I don't know if it was Park Place or Rocklyn  
20 Avenue. 11:30:14

21 Q. What was the command center? Did it have a  
22 physical structure?

23 A. It's like an RV. And the word Nassau County  
24 Police Command Center written on it.

25 Q. And was the RV manned on a continuous basis? 11:30:26

1 A. Yes.

2 Q. And I take it if it was -- Park Place is the  
3 street where you would -- right off of where the body  
4 was found, correct?

5 A. Correct. 11:30:44

6 Q. And Rocklyn is the street if you walk down  
7 the path where the body was found leads you out to  
8 Rocklyn, correct?

9 A. Correct.

10 Q. Now, in your testimony I believe you 11:30:56  
11 indicated that people would go in and out of the  
12 command center.

13 A. That's true.

14 Q. At any point in time were you one of the  
15 people manning that center? 11:31:14

16 A. No. I was mostly out on the street.

17 Q. And do you know who was manning it? Was  
18 Detective Volpe manning it?

19 A. Joe could have been there on the phones. He  
20 could be in and out. 11:31:28

21 Q. And I take it you'd be using the command  
22 center and you'd also be using police headquarters,  
23 detective bureau, correct?

24 A. Yes.

25 Q. Detective squad. 11:31:40

1                    Could you tell me the period of time that  
2                    the command center was there?

3           A.     I'd be guessing. I'd say maybe a month,  
4     month and a half, maybe.

5 Q. Well, in Shaun Spillane's memorandum he 11:31:56  
6 refers to kind of at the end of December or the end of  
7 January, beginning of January I guess it was that  
8 things had died down, leads had died down, correct?

9           A.       That's the first time I've seen his  
10 statement. 11:32:14

11 Q. I'm going to show you what's been marked  
12 Exhibit 185, which is the more legible copy of it. He  
13 says that, on paragraph 2, it says, "During the course  
14 of the initial investigation at the command post,"  
15 which I assume is the command center, correct? Same 11:33:10  
16 thing?

17	Pardon?
----	---------

18 A. Oh, okay, at the command post?

19	Q.	Yeah.
----	----	-------

20	A. Background?	11:33:16
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21	Q.	Right.
----	----	--------

22           A.     Okay, that's where you're talking about?

23	Q.	Right.
----	----	--------

24                   Let's go up to paragraph 1, the last full

25   sentence it starts off with, "A homicide command post   11:33:24

1 was set up."

2 A. Yes.

3 Q. "A homicide command post was set up in the  
4 vicinity of Park Place in Lynbrook. And Detective  
5 Volpe and other detectives and approximately five other 11:33:38  
6 precinct squad detectives were assigned to assist in  
7 the investigation of the murder of Theresa Fusco."

8 That conforms with your memory of it?

9 A. Yes, it does.

10 Q. And he then says in paragraph 2 of Exhibit 11:33:50  
11 185, on the third full sentence, the fourth line down  
12 it says, "During the course of the initial  
13 investigation at the command post approximately 500  
14 persons were interviewed. As the investigation  
15 progressed, few new developments surfaced. After 11:34:12  
16 approximately two months the precinct detectives  
17 returned to their commands."

18 A. Yes.

19 Q. Now, as I understand this memo, and you  
20 correct me if I'm wrong, that probably at the end of 11:34:30  
21 January the command post is done.

22 A. I would say so.

23 Q. That would mean these detectives that have  
24 been assigned were pulled out and sent back to their  
25 regular units, correct? 11:34:44

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1 A. Yes.

2 Q. So for approximately -- can we agree for  
3 approximately two months there's a command post sitting  
4 at Park Place in Lynbrook by where the body was found,  
5 correct? 11:35:00

6 A. Yes.

7 Q. You had also indicated in your testimony  
8 yesterday that Harry Smyle and his wife at some point  
9 told you they went and visited the spot where the body  
10 was found, correct? 11:35:16

11 A. Yes.

12 Q. And so where the body was found given the  
13 command post being present there and Harry Smyle -- did  
14 Harry Smyle -- let me backtrack.

15 Did Harry Smyle indicate to you when he and 11:35:28  
16 his wife went to visit the scene where the body was  
17 found?

18 A. Gee, I really can't recall.

19 Q. But it's fair to say that he didn't visit  
20 the scene pursuant to directions from the police or 11:35:48  
21 somebody like that, he had done this on his own as he  
22 told you, correct?

23 A. Yes, he did.

24 Q. I assume he told you this in one of the  
25 first interviews you had with him. 11:36:02

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1 A. He might have. I don't recall.

2 Q. Would it be fair to say that given the  
3 command post being there and the obvious notoriety of  
4 this particular case and the disappearance of Theresa  
5 Fusco and the finding of her body that it was pretty 11:36:26  
6 common knowledge exactly where she was found?

7 A. The area where she was found, yes.

8 Q. Yeah, the so-called Fort area, because Park  
9 Place is right off the Fort area, correct?

10 A. That's what they called it. People that 11:36:46  
11 grew up in that area called it the Fort.

12 Q. Right.

13 Now, on March 25th of 1985 you were working  
14 the 4 to 12 shift, correct?

15 A. Yes. 11:37:16

16 Q. And you stayed beyond your shift, correct?

17 A. Yes.

18 Q. And as I understand it, you stayed to 3:00  
19 in the morning?

20 A. Yes. 11:37:26

21 Q. And during the time that you were, at least  
22 from 12:00 to 3:00 in the morning you were sitting on  
23 the wire, which was the wire, the eavesdropping wire of  
24 the home of Dennis Halstead, correct, the apartment?

25 A. Correct. 11:37:44

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1 Q. And during that period of time you're  
2 listening to see whether there's any calls or  
3 statements made during any conversations in the home,  
4 correct?

5 A. Correct. 11:37:54

6 Q. And this warrant is actually a warrant  
7 bugging the house as opposed to bugging the phone,  
8 correct?

9 A. I don't know what the warrant stated.

10 Q. Well, it was both, right, you had the phone 11:38:10  
11 and you had the home?

12 A. Whoever applied for it.

13 Q. Okay. And you had a monitoring device where  
14 you could listen in on any activity, correct?

15 A. Correct. 11:38:24

16 Q. I take it from reading your prior testimony  
17 that you don't recall any particular conversation or  
18 substance of any conversation or phone call or anything  
19 that you might have heard between 12:00 and 3:00 in the  
20 morning on the morning of March the 26th, 1985, 11:38:42  
21 correct?

22 A. Not that I can recall.

23 Q. Now, you testified yesterday in the  
24 questions by Mr. Freeman that when you left at 3 that  
25 you might have spoken to Volpe or the supervisor, but 11:39:06

1 you don't recall.

2 A. I don't.

3 Q. And you also testified that you got a  
4 telephone call, you think, to come back at 8:30.

5 A. 8:30 in the morning. 11:39:26

6 Q. Correct?

7 A. Yes.

8 Q. Now, that testimony differs substantially  
9 from your prior testimony on this score, doesn't it?

10 A. How so? 11:39:40

11 Q. Well, you previously testified that you had  
12 a conversation with Joe Volpe at 3:00 in the morning  
13 and Volpe told you to come in at 8:30 in the morning.

14 A. It could have very well happened.

15 Q. Well, do you recall testifying to exactly 11:39:58  
16 those facts that you had a conversation with Joe Volpe  
17 and Joe Volpe told you to come in?

18 A. Probably did.

19 MR. CASTELEIRO: Could we have the prior  
20 deposition? 11:40:18

21 BY MR. CASTELEIRO:

22 Q. I'd ask you to turn to page 190 of -- you  
23 recall testifying in the prior deposition, correct?

24 A. Yes.

25 Q. Now, if you go down to line 23 on page 190. 11:40:40



1 The question is: "Then they go into the interrogation  
2 room" -- by "they" you're referring to Detective Volpe  
3 and Mr. Kogut and your testimony here is either  
4 Connaughton or Dempsey at 12:00 and you're sitting on  
5 the wire.

11:41:08

6 A. Yes.

7 Q. And they go in and Volpe says -- and I  
8 believe at some point before you left Volpe says to  
9 you, "Do me a favor, come back at 8:30 in the morning."

10 And you answer, "Yes."

11:41:18

11 A. That probably did happen. I don't recall  
12 today unless I look at this here prior testimony.

13 Q. So you just don't recall?

14 Didn't you review this before you came here?

15 You knew you were coming for a deposition.

11:41:36

16 A. No, I didn't read this. This here?

17 Q. Yeah, this.

18 A. No.

19 Q. Your prior testimony. You ever -- after you  
20 testified the last time in deposition, did you ever  
21 review a transcript of what your testimony was?

11:41:44

22 A. No, I forgot about the case after. I  
23 thought that was the end of the case.

24 Q. Do you recall during your last deposition  
25 you were asked a whole series of questions beginning

11:41:58

1 page 190 about the fact that Volpe when he comes out  
2 and tells you, come back at 3:00?

3 MR. FREEMAN: You mean come back at 8:30?

4 MR. CASTELEIRO: Thank you.

5 BY MR. CASTELEIRO: 11:42:14

6 Q. When he comes out and tells you at 3:00 to  
7 come back at 8:30 in the morning that Volpe never tells  
8 you anything about, hey, this case that we've been  
9 breaking our backs about is, it's breaking, it's  
10 breaking, this guy's in here confessing, do you 11:42:34  
11 remember all those questions they asked you?

12 A. No, I don't.

13 Q. What I'm going to ask you to do is take a  
14 couple of minutes and I want you to read pages 190  
15 through page 199. 11:42:48

16 A. From the top of 190?

17 Q. No, from line 23 on 190 to the top, the  
18 first line of page 199. So it's all of 191 through  
19 198.

20 A. All right. 11:44:36

21 Okay.

22 Q. You've read it?

23 Now, Mr. Sirianni, you've read pages 190 to  
24 199?

25 A. Yes. 11:50:52

1 Q. Of the deposition of June the 15th, 2010?

2 A. Yes.

3 Q. And during that questioning in that  
4 deposition you were asked a series of questions as to  
5 who told you to come back at 8:30 in the morning and 11:51:08  
6 you indicated that it was Joseph Volpe, correct?

7 A. Correct.

8 Q. And you also indicated that during that  
9 conversation, or any conversation that night with Volpe  
10 that he never said anything to you about a break in the 11:51:30  
11 case that this guy was in here confessing, correct?

12 A. No, he -- correct.

13 Q. And that you didn't question him, when he  
14 told you to come back at 8:30 in the morning you didn't  
15 question him, you just assumed it had something to do 11:51:48  
16 with the case, but you didn't question him about it,  
17 correct?

18 A. Correct.

19 Q. And at the time you left at 3:00 on the  
20 morning of, early morning hours of March 26th, 1985 you 11:52:04  
21 had no idea in a sense that Mr. Kogut was in there  
22 confessing because Joe Volpe didn't tell you anything,  
23 correct?

24 A. Correct.

25 Q. And neither did Detective Dempsey, correct? 11:52:16

1 A. Correct.

2 Q. And neither did Detective Martino who had  
3 all participated in the interrogation of John Kogut  
4 that morning, correct?

5 A. Correct. 11:52:28

6 Q. Now, you had indicated to -- strike that.  
7 But yet when you testified yesterday,  
8 despite fairly extensive questions on what I would  
9 consider, you may differ, but I'll ask you, what you  
10 consider a significant point that was being made during 11:52:56  
11 that questioning that Volpe never told -- Volpe,  
12 Dempsey, Martino never told you anything about a  
13 confession when you leave at 3:00 in the morning  
14 despite your working on the case for, since the  
15 discovery of the body, a good four months, told you 11:53:12  
16 nothing about it, you walked out of there, you didn't  
17 know anything about it, but yet he told you to come  
18 back at 8:30.

19 Significant point, isn't it?

20 A. I don't think so. 11:53:24

21 Q. You don't think so. You don't think that  
22 the fact that a case you guys have been working on, a  
23 case in which your commanding officer Spillane said  
24 approximately 500 people were interviewed at the  
25 command post and you've had no break in the case and 11:53:42

1 all of a sudden you have this guy who's in there,  
2 according to Volpe and Dempsey, confessing and when he  
3 comes out and tells you to come back at 3:00 -- at 8:30  
4 the next morning now you've worked three hours beyond  
5 your shift and he says nothing to you at all about a 11:54:04  
6 confession and a break in the case, you don't think  
7 that's significant?

8 A. No. I do not.

9 Q. And it's not until the next morning when you  
10 come in that you learn for the first time when Joe 11:54:28  
11 Volpe hands you this signed statement, correct?

12 A. Correct.

13 Q. The signed statement from Kogut that you  
14 learned for the first time that, in fact, there's been  
15 a confession in the case, correct? 11:54:46

16 A. Correct.

17 Q. As I understand it, you then sit down and  
18 you read the confession, correct?

19 A. I did.

20 Q. Now, you indicated that, yesterday in 11:55:04  
21 questioning by Mr. Freeman that Harry Smyle related a  
22 conversation that he had with John Kogut on  
23 approximately two weeks before March the 27th, 1985,  
24 the conversation had occurred, according to Mr. Smyle,  
25 in the Shell Creek Park. Do you recall that testimony 11:55:42

1 you gave yesterday?

2 A. Yes.

3 Q. And in that testimony that you gave  
4 yesterday you had indicated that Harry Smyle met Kogut  
5 at the Shell Creek Park and told Mr. Kogut that John 11:56:02  
6 Restivo had been picked up by the Nassau County Police  
7 Department, correct?

8 A. Correct.

9 Q. And then you related that Kogut was really  
10 pissed off and mad that Restivo had opened his mouth 11:56:20  
11 and was talking, correct?

12 A. Yes.

13 Q. And this is all in this conversation of  
14 March the 27th, correct?

15 A. I believe it was, yes. 11:56:34

16 Q. But you weren't a participant in the  
17 conversation of March 27th, were you?

18 A. Not that I recall, no.

19 Q. And as a result of that -- as a result of  
20 that interview on March 27th by Detective Perrino of 11:56:50  
21 Harry Smyle at which you were not present, he relates  
22 the conversation, the alleged conversation he had with  
23 John Kogut at the Shell Creek Park some two weeks  
24 before March 27th, correct?

25 A. Yes. 11:57:12

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1 Q. And have you reviewed this statement of  
2 Harry Smyle that's been marked as Exhibit 198?

3 A. I believe I did read it.

4 Q. And in that statement, the handwritten  
5 statement, a five-page statement of Mr. Smyle, 11:57:26  
6 Mr. Smyle relates the conversation he allegedly had  
7 with John Kogut in the Shell Creek Park, does he not?

8 A. Yes, he does.

9 Q. And he states on page 3 of Exhibit 198, "It  
10 was between 2:30 and 3:00 I met John Kogut down there" 11:57:48  
11 at the park. I added "At the park."

12 "I had met Kogut through John Restivo at  
13 Dennis Halstead's apartment. I told Kogut that John  
14 Restivo had been picked up by the police and  
15 questioned. Kogut was surprised and very inquisitive 11:58:10  
16 asking why. I told him I did not know."

17 That's the sum and substance of the  
18 conversation he says he had with John Kogut in his  
19 written statement. And yet you testified yesterday  
20 that Kogut was pissed off and angry that Restivo was 11:58:28  
21 suddenly talking to the police.

22 A. I did.

23 Q. You didn't even participate in the  
24 conversation.

25 A. No, I didn't. 11:58:42

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1 Q. Are you making it up as you go?

2 A. No, I don't, I didn't.

3 Q. Well, your partner Perrino took a statement,  
4 Exhibit 198, he typed up a statement Exhibit 199 and in  
5 both of those statements it relates the same exact 11:58:58  
6 content of the conversation that Smyle had with John  
7 Kogut on some two weeks before March the 27th, 1985.

8 A. Uh-huh.

9 Q. And nowhere in that, in either of those  
10 statements is there anything about Kogut being pissed 11:59:22  
11 off or Kogut is angry that John Restivo is talking to  
12 the police. In fact, Smyle says to them, says to the  
13 police, your partner, who you worked with all these  
14 years, says to your partner, I told him I didn't know  
15 why he was picked up. 11:59:40

16 Correct?

17 A. That Harry said that?

18 Q. That Harry said that.

19 A. Whatever Danny put down on the paper, yeah.

20 Q. Then you're here testifying now for the 11:59:56  
21 first time in the history of this case since 1984 when  
22 the case started, December the 5th for the first time  
23 ever yesterday you testified that Harry Smyle had a  
24 conversation with John Kogut and related the fact that  
25 Restivo had been arrested and Kogut was pissed off and 12:00:18



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1 angry that he was now talking to the police.

2 A. Well, that was my mistake.

3 Q. And it never happened, right? That  
4 conversation never, ever happened.

5 A. That he was pissed off? 12:00:34

6 Q. This conversation that you related that  
7 Smyle said occurred between him and John Kogut.

8 A. The conversation that Harry had with Danny  
9 Perrino that's what I was going by.

10 Q. Okay, well, that conversation with Danny 12:00:52  
11 Perrino there's not a word, not one single word about  
12 Kogut being pissed off, Kogut saying anything about  
13 Restivo talking to the police, nothing, correct?

14 A. Yeah. I was wrong.

15 Q. You were also wrong when you testified 12:01:22  
16 yesterday that when you were on your way to the  
17 cemetery that at Lakeview and Ocean Kogut told you guys  
18 to make a left-hand turn on to Ocean. You were also  
19 wrong in saying that, correct?

20 A. Why do you say that? 12:01:44

21 Q. Because you've testified repeatedly over the  
22 years that you didn't have any conversation with Kogut  
23 other than small talk until you got to the corner of  
24 Merrick and Ocean, Ocean and Merrick.

25 A. I think, if I remember, I testified that he 12:01:58

1 directed us down to the scene.

2 Q. You testified yesterday in questions from  
3 Mr. Freeman that when you got to the intersection of  
4 Lakeview and Ocean Kogut told us to make a left.

5 That's what you testified to yesterday. 12:02:18

6 Now, you've previously testified repeatedly,  
7 repeatedly in the trials of Kogut and hearings of Kogut  
8 that, in fact, it wasn't until you got to the corner of  
9 Ocean and Merrick that Kogut said anything. And then  
10 you asked him, What did you do here? At the 12:02:40  
11 intersection of Ocean and Merrick you asked him, What  
12 do you do here?

13 And then he said, make a right.

14 Isn't that correct?

15 A. If that's what I testified to. 12:02:52

16 MR. CASTELEIRO: We're stopping.

17 VIDEOGRAPHER: Before you start another  
18 question. Standby to go off media unit one. At  
19 12:05 going off video record.

20 (A recess was taken.) 12:06:38

21 VIDEOGRAPHER: We're now back on media unit  
22 number two. The time back on is 12:11 p.m.

23 (Plaintiff's Exhibit 272 was marked for  
24 identification.)

25 BY MR. CASTELEIRO: 12:08:44

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1 Q. Mr. Sirianni, when we stopped we were  
2 talking about when Mr. Kogut first spoke in the car  
3 ride to the cemetery.

4 A. Yes.

5 Q. I want to show you what's been marked 12:09:00  
6 Exhibit 272. And that's a partial transcript of your  
7 testimony in a Huntley hearing in March of 1986 in the  
8 case of the people versus John Kogut.

9 Now, in that you were asked at the top of  
10 the page 257 it says, "Sergeant Campbell took the most 12:09:44  
11 direct route."

12 And there was a question, "Did there come a  
13 time that Sergeant Campbell turned to you and asked  
14 you, Where do we go now, or words to that effect?

15 And you answered, "No, sir, not that I 12:10:00  
16 recall."

17 The next question, "Did you have any  
18 conversation with John Kogut while the car was going  
19 from police headquarters to the back roads of Garden  
20 City, Cherry Valley Road?"

21 "Answer: No. He spoke very little.

22 "Question: Was he smoking at the time?

23 "Answer: He was mostly smoking the  
24 cigarettes.

25 "Question: Would it be fair to say he was 12:10:24

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1 chain smoking while in the car?

2 "Answer: He smoked quite a few.

3 "Now, when you entered Lakeview Avenue up to  
4 that point had you had any conversation with John  
5 Kogut? 12:10:36

6 "Answer: If I did, it would be small talk.

7 "Question: While on Lakeview, did you have  
8 any conversation with him other than small talk?

9 "Answer: Not that I recall.

10 "Did there come a time before arriving 12:10:48  
11 within the confines of Lynbrook that you asked John  
12 Kogut any questions?

13 "Answer: Not until we got to Ocean Avenue  
14 and Merrick Road.

15 "Question: Now at this point you were going 12:11:04  
16 south on Ocean Avenue.

17 "Answer: That's correct.

18 "Question: And as you were approaching  
19 Merrick Road you asked him a question?

20 "Answer: Yes, sir, I did." 12:11:14

21 Do you recall that testimony in 1986?

22 A. Now that I'm looking at it, yes.

23 Q. I want to show you what's been marked  
24 Exhibit 273.

25 (Plaintiff's Exhibit 273 was marked for 12:11:32

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1 identification.)

2 BY MR. CASTELEIRO:

3 Q. Page 573 of your testimony at the trial of  
4 John Kogut.

5 "Question: Can you describe what happened 12:12:16  
6 when you left the homicide squad?

7 "Answer: Yes, sir. We left the homicide  
8 squad and he entered the department car number 1062.  
9 Detective Sergeant Campbell was the driver. Detective  
10 Waltman was sitting in the front passenger seat. I was 12:12:32  
11 sitting behind Detective Sergeant Campbell and  
12 Mr. Kogut was sitting behind Mr. Waltman, Detective  
13 Waltman. We exited the police parking field and drove  
14 down to Cherry Hill Road and took that to Woodfield  
15 Road. We took Woodfield Road to Lake Avenue and made a 12:12:50  
16 right-hand turn on Lakeview, took it up to Ocean, at  
17 that point we made a left-hand turn on Ocean and headed  
18 southbound to ocean.

19 "Did there come a time when you reached the  
20 area of Lynbrook in Nassau County? 12:13:06

21 "Answer: Yes, sir.

22 "Question: Was that in the vicinity of  
23 Ocean Avenue and Merrick Road?

24 "Answer: Yes, sir, it was.

25 "Question: Could you describe what happened 12:13:18

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1 as you were going down Ocean Avenue towards Merrick  
2 road?

3 "Answer: When we got to that vicinity I  
4 asked John Kogut, 'What did you do on November 10th,  
5 the night of November the 10th?'

12:13:28

6 "He then directed us to make a right-hand  
7 turn on Merrick Road from Ocean Avenue and head west  
8 bound on Merrick Road."

9 Correct?

10 A. Correct, sir.

12:13:40

11 Q. And nowhere in your previous testimony  
12 regarding this ride to the cemetery is there anything  
13 about him saying, you have to make a left at the  
14 intersection of Lakeview and Ocean, you have to make a  
15 left on to Ocean, correct?

12:13:56

16 A. Correct.

17 Q. So were you mistaken when you testified  
18 yesterday that Mr. Kogut said at the intersection at  
19 Lakeview and Ocean to make a left?

20 A. Yes.

12:14:08

21 Q. Now, as you're driving down Ocean heading  
22 towards Merrick, as you get close to the intersection  
23 of Ocean Avenue -- Ocean and Merrick, on your  
24 right-hand side is the cemetery, correct?

25 A. Correct.

12:14:28

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1 Q. And as you go down Ocean and you're  
2 travelling on Ocean, you can see the cemetery by just  
3 looking to your right out the window, correct?

4 A. Correct.

5 Q. Now, you had been to the cemetery on a 12:14:42  
6 number of occasions, correct? At least two times?

7 A. Yes.

8 Q. And you had searched it, correct?

9 A. Yes.

10 Q. And I believe you previously testified you 12:14:52  
11 spent an hour, hour and a half in the cemetery  
12 searching it, prior to March the 26th, 1985, correct?

13 A. I would say so, yes.

14 Q. Now, when you testified yesterday you  
15 indicated as you got to the cemetery that -- let me 12:15:26  
16 withdraw that.

17 Could I have this marked?

18 (Plaintiff's Exhibit 274 was marked for  
19 identification.)

20 BY MR. CASTELEIRO: 12:16:06

21 Q. Now, you testified yesterday when you got to  
22 the cemetery and you got out of the car very  
23 graphically you clasped your hands together and you  
24 said you asked Kogut where he, you know, where he  
25 killed Theresa Fusco and Kogut put his hands up and 12:16:46



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1 pointed to a spot in the cemetery, correct?

2 A. Correct.

3 Q. Now, you recall testifying in the 2005 trial  
4 of John Kogut?

5 A. Vaguely. 12:17:06

6 Q. Vaguely?

7 Well, I'm going to direct your attention to  
8 Exhibit 274 at the bottom of page 1083, which is the  
9 first page of this excerpt. And you were asked the  
10 following question by the prosecutor in the case, 12:17:26  
11 "Question: Describe for the Court what happened when  
12 you got out of the car at that location." The  
13 cemetery.

14 A. Which --

15 Q. When we got out of the car -- I'm sorry, 12:17:42  
16 1083, it's the first page in.

17 A. Okay.

18 Q. 1083, line 22.

19 A. Okay.

20 Q. Question is, was asked of you by the trial 12:17:56  
21 prosecutor, "Describe for the Court what happened when  
22 you got out of the car at that location.

23 "Answer: When we got out of the car, all  
24 four of us, John led me and Sergeant Campbell and  
25 Detective Waltman in this pathway going down like this 12:18:14



1 to this area."

2 Nothing at all in your answer in the retrial  
3 of John Kogut about John Kogut getting out of the car  
4 and putting his hands up and pointing to a spot,  
5 correct? 12:18:34

6 A. At this time I didn't recall that, but I do  
7 now.

8 Q. Oh, so in 2005 you didn't recall it and you  
9 didn't recall it in 1986, you didn't recall it in the  
10 first trial of Mr. Kogut, but today you suddenly recall 12:18:44  
11 it, or yesterday.

12 A. You're bringing back old memories.

13 Q. There's a lot of things you previously  
14 testified that you forgot, correct?

15 A. Yes, I do. I did. 12:18:58

16 Q. When you were being prepped, did you go  
17 through that, that part of it -- I'll withdraw that.

18 You were prepped on this case for what,  
19 Monday and you were prepped on this case on Tuesday in  
20 the morning and then you were prepped six weeks prior 12:19:26  
21 to Monday, correct?

22 A. Correct.

23 Q. By your attorneys.

24 And then when you testified yesterday for  
25 the first time in the history of this case, it's been 12:19:40

1 going on since 1984, you testified that when Kogut gets  
2 out of the car he puts his hands together, because he's  
3 cuffed, correct?

4 A. Correct.

5 Q. And he points to the spot where he allegedly 12:19:58  
6 killed Theresa Fusco, correct?

7 A. Yes, he did.

8 Q. Uh-huh.

9 And in 1986 did you forget that occurred?

10 A. Yes. 12:20:14

11 Q. And in 2005 when Mr. Kogut was on trial for  
12 the murder of Theresa Fusco did you forget that that's  
13 what occurred?

14 A. Yes, I did.

15 Q. Now, when -- on March the 26th when you go 12:20:36  
16 to the spot where Theresa Fusco's body was found, there  
17 were pallets still there, correct?

18 A. Yes.

19 Q. And there was a marker where Theresa's body  
20 was, correct? 12:21:00

21 A. A stick.

22 Q. A stick. And they were at the scene for  
23 anybody and everybody to see, correct?

24 A. Whoever knew where her body was found.

25 Q. Or maybe even whoever had ever been to the 12:21:16

1 command center, which was right off of where the body  
2 was found, correct?

3 A. Could be.

4 Q. Now, when you take Kogut on what you  
5 referred to as the tour, this is after you've read the 12:21:42  
6 statement, correct?

7 A. Correct.

8 Q. And as you're doing this tour, as you, I  
9 think, related to Mr. Freeman in his questioning of  
10 you, that you're not questioning or interrogating John 12:22:02  
11 Kogut as you're doing this tour, correct?

12 A. No, I'm not.

13 Q. You're just taking him to the spots where --  
14 Waltman is with you, Detective Waltman?

15 A. Yes. 12:22:18

16 Q. And Soupy Campbell is with you, correct?

17 A. Yes.

18 Q. And they also know the contents of the  
19 statement, correct?

20 A. I would assume so, yes. 12:22:26

21 Q. And so everybody, all three of you guys know  
22 exactly where you're going when you get into the police  
23 car at headquarters and start the drive to the  
24 cemetery, correct?

25 A. Yes. 12:22:42

1 Q. And you know you're going to go to the  
2 cemetery. And then from the cemetery you know you're  
3 going to go to the spot where Theresa's body was found,  
4 correct? A few short blocks away.

5 A. We knew we were going to the cemetery, but 12:22:56  
6 we didn't know where he actually killed her in the  
7 cemetery.

8 Q. You're not answering my question.  
9 You're taking him to the cemetery?

10 A. Yes. 12:23:08

11 Q. You know that, right?

12 A. Right.

13 Q. Because he says in this confession, I killed  
14 her in the cemetery, correct?

15 A. Yes. 12:23:14

16 Q. And then you're going to take him, you all  
17 know and then you're going to take him to the spot  
18 where her body was found, which everybody knows, right?  
19 You know it, Sergeant -- I mean Detective Waltman knows  
20 it, Soupy Campbell knows it, correct? 12:23:28

21 A. Correct.

22 Q. You all know exactly where you're going.

23 A. Yes.

24 Q. And your objective is -- your objective is  
25 not to interrogate Kogut, correct, as you do this tour? 12:23:38

1 A. Correct.

2 Q. You're just going to take it here, show us  
3 the cemetery, here show us where the body was, correct?

4 A. Correct.

5 Q. That's the only thing you're doing. You're 12:23:48  
6 not seeking, as you're doing this, to further  
7 interrogate Mr. Kogut.

8 A. No.

9 Q. Now, you indicated that the statement of  
10 John Kogut in questions by Mr. Freeman yesterday that 12:24:30  
11 there were things in the statement that he gave that,  
12 you know, the police were not aware of. And one of the  
13 things you said was the police were not aware of that  
14 Kogut was coming from a moving job, correct? That's  
15 one of the things you said, right? 12:24:56

16 A. Didn't know that.

17 Q. But the police never, ever corroborated  
18 that, correct?

19 A. I can't answer that. I don't know.

20 Q. You said that -- you also said the police 12:25:10  
21 were not aware that a group of three men were drinking  
22 and smoking pot and that Restivo was driving, Halstead  
23 was in the passenger seat and Kogut was on a cushion,  
24 correct?

25 A. Yes. 12:25:26

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1 Q. That's what you said, you said the police  
2 never knew that.

3 Well, the police have never been able to  
4 find anything to corroborate that alleged fact,  
5 correct? 12:25:36

6 A. Not to my knowledge.

7 Q. You also said that, oh, the police didn't  
8 know she was picked up at the 30-mile-per-hour sign on  
9 Merrick Road, correct?

10 A. That's correct. 12:25:46

11 Q. And there's been nothing to corroborate that  
12 fact, correct?

13 A. Correct.

14 Q. You also said the police didn't know who  
15 grabbed her first and there's nothing -- correct, you 12:25:58  
16 said that?

17 A. If I said it.

18 Q. You said it yesterday, right?

19 A. Yeah.

20 Q. And nobody, the police have never been able 12:26:06  
21 to corroborate that fact, correct?

22 A. Not that I know of.

23 Q. And the police have never been able to  
24 corroborate the fact that any one of these three

25 people, Halstead, Restivo or Kogut ever knew Theresa 12:26:22

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1 Fusco, correct?

2 MR. FREEMAN: Objection.

3 THE WITNESS: I can't answer that. I don't  
4 know.

5 BY MR. CASTELEIRO:

6 Q. You indicated that, in the questions this  
7 morning with Ms. Cornwall that Plaintiff's Exhibit 168,  
8 the poster of Theresa Fusco --

9 A. The missing person.

10 Q. Yeah, the missing person, this poster 168 12:27:16  
11 was up all over the area, correct?

12 A. Yes.

13 Q. It was -- and I assume it was displayed on  
14 lamp posts and in store windows and things like that,  
15 correct? 12:27:34

16 A. Yes.

17 Q. Would you say it was prominently displayed?

18 A. I would say so, yes.

19 Q. So people in Lynbrook clearly were aware of  
20 it, correct? 12:27:48

21 A. Yes.

22 Q. And the poster, the poster remained up once  
23 Theresa's body was discovered?

24 A. I don't recall if it was up.

25 Q. Now, the command center down at the, on Park 12:28:06

1 Place, did it have any signage on it other than Nassau  
2 County Police Department?

3 A. Command post.

4 Q. Command post.

5 And where was that sign that said command 12:28:18  
6 post?

7 A. It's on, I believe it's written on the side  
8 of the bus or RV, whatever you want to call it.

9 Q. And that command post had facilities for, to  
10 interview witnesses, correct, inside? 12:28:36

11 A. Yes.

12 Q. It had little rooms I take it.

13 A. No, if I -- that command post in the back I  
14 think you'd interview somebody, in the back of the bus.

15 MR. CASTELEIRO: If I may just have one 12:29:20  
16 second.

17 BY MR. CASTELEIRO:

18 Q. Mr. Sirianni, you indicated that, in a  
19 question by Mr. Freeman yesterday that your condition,  
20 your health precluded you from flying on doctor's 12:29:48  
21 orders, correct?

22 A. Correct.

23 Q. Does your condition prevent you from riding  
24 in a car any kind of distance or travelling in a train  
25 any kind of distance? 12:30:04



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1 A. Yes.

2 Q. So you're not able to ride in a train or  
3 ride in a car, say, you know, a couple --

4 A. Without oxygen.

5 Q. Without oxygen. So if you have oxygen, you 12:30:16  
6 can do it?

7 A. Yeah, but that's a hassle.

8 Q. It's a hassle. Okay.

9 I have nothing further.

10 MS. CORNWALL: We'll reserve the balance of 12:30:26  
11 time.

12 MR. FREEMAN: I have a few questions for  
13 clarification.

14 MS. CORNWALL: I'm not sure if that's  
15 covered by the order. 12:30:34

16 MR. FREEMAN: It's certainly been done at  
17 every deposition I've been to as an  
18 accommodation to both sides. I think you'll  
19 recall that, especially by Mr. Grandinette.

20 MS. CORNWALL: I believe that the 12:30:50  
21 questioning, or the proffer to the Court for  
22 this particular deposition was a representation  
23 that given Mr. Sirianni's health issue you  
24 needed to do your direct examination of him for  
25 preservation purposes for trial. And you had an 12:31:08

1 order to be able to depose him yesterday and we  
2 were given up to three hours today. That's my  
3 understanding.

4 MR. FREEMAN: Well, I certainly didn't use  
5 up my time and I don't believe that the judge's 12:31:22  
6 ruling was based on preservation.

7 In any event, I just have a few questions.

8 MS. CORNWALL: Note my objection for the  
9 record.

10 REDIRECT EXAMINATION

11 BY MR. FREEMAN:

12 Q. Detective Sirianni, you were asked some  
13 questions by Ms. Cornwall about the SIB file.

14 A. Yes, sir.

15 Q. Remember those questions? 12:31:44

16 A. Yes, sir.

17 Q. Based on previous questions by Ms. Cornwall,  
18 it was determined earlier today that there was a file  
19 that Joe Volpe may have had called a case file.

20 A. Yes, sir. 12:32:00

21 Q. Which he actually did have.

22 A. Yes, he did.

23 Q. And I believe it was your testimony that  
24 there were separate files kept by SIB.

25 A. Yes, sir. 12:32:12

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1 Q. Is that correct?

2 A. Yes, it is. They maintain their file.

3 Q. Do you know for sure that there was a  
4 separate SIB file in this case?

5 A. For a fact, no. 12:32:20

6 Q. But that would be standard operating  
7 procedure?

8 A. Yes, sir.

9 Q. You were asked a question as to whether the  
10 SIB unit, assuming they had a case file, would SIB be 12:32:32  
11 responsible for turning over the case file to the  
12 prosecutor, or would they turn it over to Volpe first  
13 and then their part of the case file or their case file  
14 would get turned over to the prosecutor, if you know.

15 MS. CORNWALL: Objection to form. 12:32:56

16 Objection, leading. Objection, asked and  
17 answered.

18 BY MR. FREEMAN:

19 Q. Do you understand my question?

20 A. If I understand it correctly, you're saying 12:33:02  
21 that the SIB tech would bring his folder to Volpe and  
22 then Volpe would then --

23 Q. I don't know the answer to the question.

24 I'm asking you if, according to your understanding, the  
25 SIB case file, if one existed, would that go directly 12:33:16

1 to the prosecutor, would SIB unit turn over the folder  
2 in a homicide case to the prosecutor, or would it go to  
3 Volpe first and then turned over to the prosecutor? If  
4 you know.

5 MS. CORNWALL: Objection. 12:33:36

6 THE WITNESS: I really don't remember how  
7 that worked at this date.

8 BY MR. FREEMAN:

9 Q. I'd like you to look at Exhibit Deposition  
10 199 and ask you to look at the first paragraph. Read 12:34:08  
11 it to yourself, please.

12 Did you read it?

13 A. The top paragraph?

14 Q. Yes.

15 A. Yes. 12:34:54

16 Q. Okay. Would you read it into the record,  
17 please.

18 A. "Was surprised and very inquisitive asking  
19 why I" --

20 Q. Why don't you read the beginning of the 12:35:04  
21 sentence from the prior page so it has some context.

22 A. "About two weeks ago on the weekend I took  
23 my two kids down to Shell Creek Park Island Park. It  
24 was between 2:30 and 3 p.m. I met John Kogut down  
25 there. I had met Kogut through John Restivo at Dennis 12:35:22

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1 Halstead's apartment. I told Kogut that John Restivo  
2 had been picked up by the police and questioned. Kogut  
3 was surprised and very inquisitive asking why. I told  
4 him I did not know. I then asked him where he was  
5 living and he said around the park, but he would not 12:35:42  
6 say where.

7 "That night I got a telephone call from John  
8 Restivo and he was like a maniac wanting to know why I  
9 was telling this to Kogut. He told me to keep my mouth  
10 shut. I then asked him if he had anything to worry 12:36:00  
11 about. He seemed to quiet down and he said that he did  
12 not kill her. About five minutes later I called up  
13 John -- I called John up because I was pissed and told  
14 John, if you got problems, don't call my house."

15 MS. CORNWALL: Objection for the record. 12:36:20

16 BY MR. FREEMAN:

17 Q. Now, is that paragraph that you just read,  
18 is that consistent with your understanding of the facts  
19 of this case as you took them during -- or Perrino took  
20 them during the investigation of this case? 12:36:42

21 A. Yes.

22 Q. Do you see the word "pissed off"?

23 A. Yes.

24 Q. Who does that apply to?

25 MS. CORNWALL: Objection. 12:36:50

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1 THE WITNESS: Restivo.

2 BY MR. FREEMAN:

3 Q. Did you make a mistake earlier?

4 MS. CORNWALL: Objection.

5 THE WITNESS: Yes. 12:36:54

6 BY MR. FREEMAN:

7 Q. Who did you attribute it to earlier?

8 A. To Kogut.

9 Q. Now that you've read it again to yourself  
10 and into the record, are there any other changes or 12:37:04  
11 mistakes that you're aware of?

12 A. No.

13 Q. Do you recall testifying yesterday that  
14 about the incident -- not the incident. Withdrawn.

15 Do you recall testifying yesterday about 12:37:32  
16 leaving the headquarters Nassau County Police  
17 Department headquarters the early morning hours of  
18 March 26th? Do you remember you were working a wire?

19 A. Yes.

20 Q. And you -- is it fair to say -- 12:37:48

21 A. 3:00.

22 Q. -- you left around 3 a.m.?

23 A. Yes.

24 Q. Did you know any specifics about a case  
25 breaking? 12:38:02

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1 A. No, sir, not at that time.

2 Q. Did you have any feelings with respect to  
3 why you were being called back in the morning or why  
4 you were, in fact, called back?

5 MR. CASTELEIRO: Objection.

12:38:14

6 THE WITNESS: No, sir.

7 BY MR. FREEMAN:

8 Q. Pardon?

9 A. No, sir.

10 Q. Do you recall being asked yesterday whether 12:38:20  
11 it was unusual to come back early in the morning after  
12 a 4 to 12 shift?

13 A. Yes, sir.

14 Q. And why was it unusual to get called back?

15 A. Why was it unusual?

12:38:38

16 Q. Yeah. I mean, how many hours of sleep had  
17 you --

18 MR. CASTELEIRO: He said it wasn't unusual.

19 THE WITNESS: About three hours.

20 BY MR. FREEMAN:

21 Q. I'm sorry if I misspoke.

22 Did you know the reason why you were being  
23 called back before you got back at 8:30 in the morning?

24 A. No, sir.

25 Q. You testified just a moment ago that the

12:39:02

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1 object of taking Mr. Kogut out on a tour was to have  
2 him point out where certain things happened, correct?

3 A. Correct.

4 Q. The object was not to question or  
5 interrogate him, correct?

12:39:22

6 A. Correct.

7 Q. Even though the object was not to  
8 interrogate him, did he make certain statements during  
9 the tour that were incriminating?

10 A. Yes.

12:39:34

11 MR. FREEMAN: I have nothing further.

12 MR. CASTELEIRO: Nothing further.

13 MS. CORNWALL: Nor do I. Thank you.

14 VIDEOGRAPHER: Standby to go off video.

15 This concludes media unit two and our

12:39:42

16 deposition. The time is 12:42 p.m.

17 (The deposition concluded at 12:42 p.m.)

18

19

20

FRANK SIRIANNI

21

22 Subscribed and sworn to before me

23 This \_\_\_\_\_ day of \_\_\_\_\_, 2012

24

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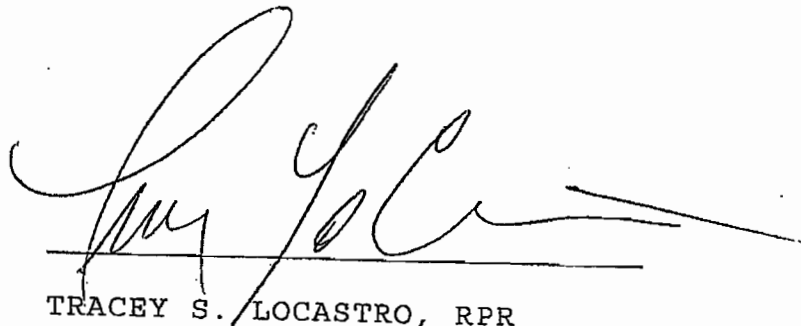
CERTIFICATE OF OATH

STATE OF FLORIDA

COUNTY OF PALM BEACH

I, Tracey LoCastro, RPR, Notary Public,  
State of Florida, certify that FRANK SIRIANNI  
personally appeared before me on Wednesday, December  
14, 2011 and was duly sworn.

WITNESS my hand and official seal on this  
29<sup>th</sup> day of December, 2011.

A handwritten signature in cursive script, appearing to read 'Tracey S. LoCastro', is written over a horizontal line.

TRACEY S. LOCASTRO, RPR

Notary Public

Commission #DD 0793034

Expires July 31, 2012

Frank Sirianni

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REPORTER'S CERTIFICATE

STATE OF FLORIDA

COUNTY OF PALM BEACH

I, TRACEY S. LOCASTRO, RPR, certify that I was authorized to and did stenographically report the foregoing deposition of FRANK SIRIANNI; that a review of the transcript was not requested; and that the foregoing transcript, pages 386 through 483, is a true record of my stenographic notes.

I FURTHER CERTIFY that I am not a relative, employee, attorney, or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

Dated this 29<sup>th</sup> day of December, 2011  
at Palm Beach County, Florida.

A handwritten signature in black ink, appearing to read 'Tracey S. Locastro', is written over a horizontal line.

TRACEY S. LOCASTRO, RPR



Frank Sirianni

[&amp; - 80s]

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